IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6220 of 2007()

CRIME NO.65/07 OF PANNIYANKARA POLICE STATION

: PETITIONER

FIROZ KHAN,
S/O.ABDUL RAZAK, AGED 32 YEARS, "SUDHARS",
MANAKULAM, KOLLARIKATHIPARAMBA, ARAKINAR P.O.,
KOZHIKODE.

BY ADV. SRI.K.B.GANGESH

RESPONDENTS:

THE SUB INSPECTOR OF POLICE,
PANNIYANKARA POLICE STATION, KOZHIKODE.
(REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM).

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6220 of 2007

Dated this the 9th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 498 A I.P.C. The defacto complainant - the wife of the petitioner, had filed a complaint before the Magistrate. The same was referred to the police under Section 156(3) Cr.P.C. Crime was registered. Investigation was completed. Final report was filed. Cognizance was taken by the learned Chief Judicial Magistrate, Kozhikode. The petitioner is employed abroad. Therefore the petitioner could not appear before the learned Magistrate. A warrant of arrest has been issued against the petitioner by the learned Magistrate. The petitioner, who is employed abroad, is now returning to India. He finds the warrant of arrest issued by the learned Magistrate waiting for him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to co-operate with the court for expeditious disposal of the case against him. He is willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that his application for regular bail

may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further apprehends that before he reaches the court to surrender and seek bail, he may be arrested and wreaked to court in execution of the non bailable warrant issued by the learned Magistrate against him. In these circumstances, he prays that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This bail application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstances of the case, there shall be a direction that the warrant of arrest issued by the learned Magistrate against the petitioner shall not be executed till 06.11.07, the next date of posting. On or before that date, the petitioner shall surrender before the learned Magistrate and seek regular bail.

(R.BASANT, JUDGE)

rtr/-